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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,198	02/17/2004	Stephane Brochu	2634-3A1	9909

7590 09/08/2004

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EXAMINER


NGUYEN, CHI Q

ART UNIT PAPER NUMBER

3635

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,198	<b>Applicant(s)</b> BROCHU, STEPHANE 	
	<b>Examiner</b> Chi Q Nguyen	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 11 is objected to because the examiner is not sure what applicant intends to claim in the combination. Examiner cannot determine whether applicant desires to claim the combination of gutter, gutter retaining member, and a device, or whether applicant desires the combination of gutter and device. Examiner interpreted it as claiming the combination of gutter and device.

In response to this office action, applicant must clarify which combination is desired.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 8, and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pepper (US 4,553,356).

Pepper discloses in figures 1-3 and column 3, line 10 to column 4, line 59, and a sealing arrangement for a rainwater gutter assembly 10. The gutter assembly 10 includes a gutter 20 having a typically U-shaped cross-section. Examiner considers U-shaped cross-sections to have two substantially parallel legs extending from a third member disposed at an end of each of the two members. Examiner interprets the gutter leg closest to the structure 14 as the rear wall, the leg farthest from the wall as the front wall, and the reference number 20 to point to the bottom wall.

Pepper also discloses an elongated sealing strip 28 that includes a continuous sealing lip portion 30 which is adapted to sealingly engage the associated supporting surface 14, and includes a joining portion 32 for securely joining the sealing strip to the upper edge portion of the gutter 20. Sealing lip portion 30 comprises a relatively flexible material. The sealing lip portion 30 is a second side of the elongate strip 28 extending away from the joining portion 32, and the joining portion 32 to be the first side of the elongated strip 28. Column 4, lines 27-35, disclose the joining portion 32 configured for retaining edge portion of gutter 20 within receiving groove 36. The elongated sealing strip 28 is the claimed mounting member and the leg that reference number 36 points to in figure 3, is the claimed means for securing the mounting member 28 to the gutter 20.

Additionally, Pepper discloses a leaf screen 22 that extends the length of the gutter and has first and second extending sides. Because the screen 22 extends along the gutter's length, it is elongated. Also, the screen 22 is substantially planar and has a plurality of apertures as disclosed in figure 1.

Pepper discloses one of the screen's 22 sides being engaged with the joining portion 32; the apertures of screen 22 are arranged in diagonal rows. Pepper discloses a retaining rib 3, which extends generally into the groove 36 for coaction with ribs 24, 26 provided on the inner surface of gutter 20. The retaining rib 38 is the claimed retaining means. The front and rear walls of gutter 20 constitute sidewalls extending vertically from each side of the screen 22.

Because Pepper discloses the structural limitations of the above claims, it is inherently capable of performing the same functions or being used in the same fashion as the claimed invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper (US 4,553,356) in view of Morin (US 5,842,311).

Regarding claim 3-6, Pepper's disclosure is discussed above. Additionally, Pepper discloses the apertures of screen 22 being disposed in diagonal rows oriented at a 45-degree angle with the sides of screen 22. However, Pepper does not disclose the apertures of screen 22 being circular and having diameters between 2.5 and 10mm, and 3.0 and 4.0mm. Additionally, Pepper does not disclose spacing the apertures apart by a distance of between 10 and 15mm, and by between 5 and 10mm. Morin discloses in figure 1 and in column 2, lines 17-23, circular apertures 32 disposed in a gutter screen 10 being of such size as to enable water to enter the gutter but keep out debris.

Therefore, Examiner considers it obvious to one of ordinary skill in the art at the time the invention was made to make the holes of Pepper's screen 22 circular and the make them between 2.5 and 10mm, and between 3.0 and 4.0mm, and to space them apart by a distance of between 10 and 15mm or by between 5 and 10mm. One of

Art Unit: 3635

ordinary skill would be motivated to make such a modification so that the screen 22 (of Pepper) would enable water to enter the gutter but keep debris out.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper.

Pepper's disclosure is discussed above. Specifically, in the discussion relating to claim 9, Pepper discloses a retaining rib 38, which extends generally into the groove 36 for coaction with ribs 24, 26 provided on the inner surface of gutter 20. Examiner considers the retaining rib 38 to be the claimed retaining means and to have a V-shaped cross section. Examiner also considers the ribs 24, 26 in concert with the gutter wall to form a U-shaped cross section. Examiner considers it within the skill on one of ordinary art to orient the ribs 24, 26 to form a V-shaped groove instead of a U-shaped groove. Examiner considers it a matter of design choice to provide a V-shaped groove instead of a U-shaped groove, because applicant has not disclosed that the V-shaped solves any stated problems or is for any particular purpose and it appears that the invention would perform equally well with the U-shaped groove. One of ordinary skill would make modify the U-shaped groove of Pepper to a V-shaped groove to provide a safer tongue and groove connection because it has less wiggle room.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Landis (US 3,333,803), Schoenherr (US 5,570,860), and Winger (US 4,750,300) teach gutter and shield structures.

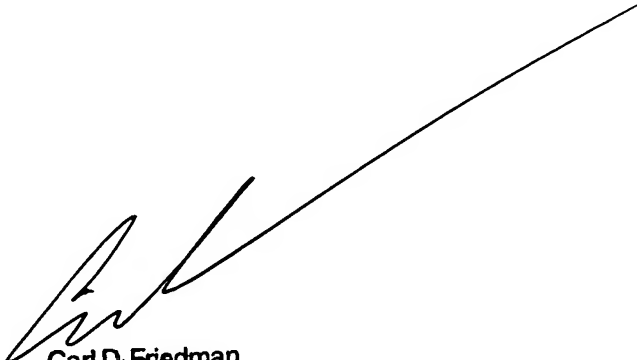
Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-

Art Unit: 3635

1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.  
CQN  
9/3/04



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600